

(g) Motion to Modify the Protective Order. A party may move at any time in this court to modify a protective order to remove protection from some material or to include another person within its terms. This court may decide the motion or may remand the case to the agency. This court, sua sponte, may direct the parties to show cause why a protective order should not be modified.

Practice Note

Transcript of Agency Proceeding at Government Expense. These rules do not require an agency to provide a party with a written transcript at the agency's expense. Any party seeking a written transcript of a hearing should direct the request to the agency, not the court.

Agency. The term agency in these rules includes a board, commission, or arbitrator.

Rule 18. Stay Pending Review

(a) Motion for a Stay.

- (1) **Initial Motion Before the Agency.** A petitioner must ordinarily move first before the agency for a stay pending review of its decision or order.
- (2) **Motion in the Court of Appeals.** A motion for a stay may be made to the court of appeals or one of its judges.
 - (A) The motion must:
 - (i) show that moving first before the agency would be impracticable; or
 - (ii) state that, a motion having been made, the agency denied the motion or failed to afford the relief requested and state any reasons given by the agency for its action.
 - (B) The motion must also include:
 - (i) the reasons for granting the relief requested and the facts relied on;
 - (ii) originals or copies of affidavits or other sworn statements supporting facts subject to dispute; and
 - (iii) relevant parts of the record.
- (C) The moving party must give reasonable notice of the motion to all parties.
- (D) The motion must be filed with the circuit clerk and normally will be considered by a panel of the court. But in an exceptional case in which time requirements make that procedure impracticable, the

Rule 18. Stay Pending Review

(a) Petition for Review or Notice of Appeal; Agency Order.

A petition for review or notice of appeal must be filed with this court before it will entertain a motion for a stay pending review. A motion for stay pending review must be accompanied by a copy of the agency decision on the merits and a copy of any agency order on the motion for a stay pending review.

(b) Length of Motion, Response, and Reply; Copies; Briefs.

- (1) A motion or a response to a motion for a stay pending review may not exceed 20 pages. A reply may not exceed 10 pages,
- (2) An original and four copies of a motion response, or reply must be filed.
- (3) A separate brief supporting a motion, response, or reply is not permitted.

(c) Notice and Service When Requesting Immediate Action; Facsimile.

- (1) A party moving for a stay pending review who requests immediate action by the court must - before filing - all parties that a motion will be filed and must utilize an expedited method of service.
- (2) If a motion for stay pending review is sent to the court by facsimile transmission, a certificate of interest must be included, and opposing counsel must be served in the same manner. The filing must state the name, address, and, if applicable, the facsimile numbers of the persons served.

FEDERAL RULES OF APPELLATE PROCEDURE

motion may be made to and considered by a single judge.

- (b) **Bond.** The court may condition relief on the filing of a bond or other appropriate security.

FEDERAL CIRCUIT RULE

- (d) **Statement.** If an initial motion for a stay pending review was not made in the agency under Fed. R. App. P. 18(a), movant must include in its motion in this court a statement explaining why it was not practicable to do so.

Practice Notes

Form Requirements. See Federal Circuit Rule 32(f) for form requirements for motions and other documents. See also Federal Rule of Appellate Procedure 27 and Federal Circuit Rule 27 for other requirements concerning motions.

Certificate of Interest. The form for the certificate of interest is at Appendix of Federal Circuit Forms, Form 6.

Agency. The term agency in these rules includes a board, commission, or arbitrator.

Rule 19. Settlement of a Judgment Enforcing an Agency Order in Part

When the court files an opinion directing entry of judgment enforcing the agency's order in part, the agency must within 14 days file with the clerk and serve on each other party a proposed judgment conforming to the opinion. A party who disagrees with the agency's proposed judgment must within 7 days file with the clerk and serve the agency with a proposed judgment that the party believes conforms to the opinion. The court will settle the judgment and direct entry without further hearing or argument.

Rule 20. Applicability of Rules to the Review or Enforcement of an Agency Order

All provisions of these rules, except Rules 3-14 and 22-23, apply to the review ~~or enforcement~~ of an agency order. In these rules, "appellant" includes a petitioner or applicant, and "appellee" includes a respondent.

Rule 20. Applicability of Rules to the Review of an Agency Order.

All provisions of these Federal Circuit Rules, except Federal Circuit Rules 3 – 12, apply to the review of an agency order. In these Federal Circuit Rules, "appellant" includes a petitioner or applicant, and "appellee" includes a respondent.